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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/128,753	08/04/1998	DONALD V. LIGHTCAP, JR.	DVL-003PAT	3373

7590 07/28/2005
Mark F. Smith
905 Ohio Pike
Cincinnati, OH 45245

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/128,753	LIGHTCAP, ET AL.	
	Examiner	Art Unit	
	Alton N. Pryor	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 02 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-13, 15-17, 25-27, 29, 30, 32, 33, 35-41, 43, 46 and 47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 42 and 46 is/are allowed.
- 6) ☒ Claim(s) 1-3, 7, 8, 16, 17, 25-27, 30, 32, 33, 35-41, 43 and 47 is/are rejected.
- 7) ☒ Claim(s) 4, 5, 9-13, 15, 29 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The finality of the rejection of the last Office action is withdrawn.

Claim Rejections - 35 USC § 112

Claim 47 recites the limitation "a plant growth regulator" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3,7,8,16,17,25-27,30,32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraft's Cool Whip. The office takes official notice that cool whip has been available before the filing date of this application (8/4/98) and that cool whip meets the limitations of the instant composition. The ingredient content label of cool whip list vegetable oil (coconut oil), emulsifier (polysorbate 80), foam agent (xanthan gum), hydrolyzed protein (caseinate protein), and water. Polysorbate is a mixture of sodium lauryl sulfate and oxyethylate. See label. The label does not state that cool whip contains 40 to 90% vegetable oil. However, in a claim to a composition where all limitations are met except for the amount of an ingredient, it is important for the applicant to show the criticality of the amount.

Claims 33,35-41,43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oshio et al (US 4244731; 1/13/81). Oshio suggests a method of controlling plant growth with an aerosol composition comprising a plant growth regulator, vegetable oil

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(pine oil), an emulsifier (alkyl sulfonate, alkyl arylsulfonate, alkyl sulfate, polyethylene glycol alkyl ether), a foam agent (starch or gum arabic powder) and water. Oshio teaches that the composition can further comprise agricultural chemicals such as fungicides, insecticides, nematocides, etc. See abstract, column 6 line 51 – column 7 line 33. It would have been obvious to one having ordinary skill in the art to develop the instant method. One would have been motivated to do this since the method was suggested by Oshio.

Claim Objection

Claims 4,5,9-13,15,29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach or suggest the instant composition having silicone compound, alkyl sulfonate, aryl sulfonate, amine oxide, ammonium compound, aryl oxyalkylate, carboxyalkylcellulose, and mucilage. Claims 42 and 46 are allowable. The prior art does not teach or suggest the instant method of claim 42 wherein the specified vegetable oils are employed.

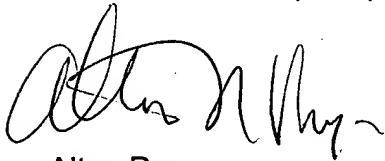
Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Alton Pryor', is written over the printed name.

Alton Pryor
Primary Examiner
AU 1616